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OFFICE OF PETITIONS

In re Application of :
Yuri V. Melnik et al : CORRECTED DECISION
Application No. 09/903,047 : UNDER 37 CFR 1.313(c)(3)
Filed: July 11, 2001 :
Attorney Docket No. 23600-7006 :

This is a corrected decision on the petition under 37 CFR 1.313(c), filed March 29, 2005, which is being treated under 37 CFR 1.313 (c)(3), to withdraw the above-identified application from issue after payment of the issue fee. The decision mailed March 30, 2005 is hereby vacated.

The petition is **DISMISSED**.

37 CFR 1.313(c) provides that:

Once the issue fee has been paid, the application will not be withdrawn from issue upon petition by the applicant for any reason except:

- (1) Unpatentability of one or more claims, which petition must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
- (2) Consideration of a submission pursuant to 37 CFR 1.114; or
- (3) Express abandonment of the application. Such express abandonment may be in favor of a continuing application.

See Changes to Application Examination and Provisional Application Practice Interim Rule, 65 Fed. Reg. 14865, 14873 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office 47, 54 (Apr. 11, 2000).

It appears that petitioner seeks withdrawal of the instant application from issue for the purpose of express abandonment in favor of the filing of a continuing application under 37 CFR 1.53(b). However, 37 CFR 1.6(d) states that “[f]acsimile transmissions are not permitted and, if submitted, will not be accorded a date of receipt.” Accordingly, before the petition to withdraw from issue can be granted, the continuation application papers must be sent to the U.S. Patent and Trademark Office by mail or deposited in the Office of Initial Patent Examination.

In view of the above, the application file will be retained in the Office of Petitions for one month

in order to allow petitioner sufficient time to file a renewed petition under 37 CFR 1.313(c)(3), along with a copy of the continuation application transmittal under 37 CFR 1.53(b). If no renewed petition under 37 CFR 1.313(c)(3) is submitted, this application will be referred to Publishing Division for issuance into a patent.

Telephone inquiries should be directed to Wan Laymon at (571) 272-3220.

Wan Laymon
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Petitions Examiner
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Office of the Deputy Commissioner
for Patent Examination Policy